

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

SMITH & NEPHEW, INC.,

Plaintiff,

V.

ARTHREX, INC.,

Defendant.

Civil Action No. 2:07-cv335

JURY DEMANDED

PLAINTIFF'S ORIGINAL COMPLAINT

INTRODUCTION

1. This is an action for patent infringement by the plaintiff, Smith & Nephew, Inc. (“Smith & Nephew”), against the defendant, Arthrex, Inc. (“Arthrex”), pursuant to Title 35 of the United States Code.

PARTIES

2. Smith & Nephew is a Delaware corporation with a principal place of business at 150 Minuteman Road, Andover, Massachusetts 01810. Smith & Nephew is engaged in the business of designing, manufacturing, marketing and selling medical devices used in anterior cruciate ligament (“ACL”) repair.

3. Arthrex is a Delaware corporation with a principal place of business at 1370 Creekside Boulevard, Naples, Florida 34108. Upon information and belief, Arthrex has recently entered the business of designing, manufacturing, marketing, and selling medical devices used in ACL repair.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 and 1338(a) and principles of pendent jurisdiction.

5. Venue is proper in this District under 28 U.S.C. §§ 1400(b) as, on information and belief, Arthrex has transacted business and committed acts of infringement in this District, and this action arises from the transaction of that business and that infringement.

SMITH & NEPHEW'S PATENTS

6. Smith & Nephew is the owner by assignment of United States Patent No. 5,645,588 (the "'588 patent"), entitled "Graft Attachment Device," which duly and legally issued on July 8, 1997. A true and correct copy of the '588 patent is attached hereto as Exhibit A.

7. Smith & Nephew is the owner by assignment of United States Patent No. 5,306,301 (the "'301 patent"), entitled "Graft Attachment Device and Method of Using Same," which duly and legally issued on April 26, 1994. A true and correct copy of the '301 patent is attached hereto as Exhibit B.

FIRST CLAIM FOR RELIEF

(Patent Infringement)

8. Smith & Nephew re-alleges and incorporates by reference paragraphs 1 through 7, as if fully set forth herein.

9. Arthrex is infringing and has infringed and/or induced infringement of and/or contributed to the infringement of the '588 patent, including, without limitation, by making, using, selling, offering for sale, and/or importing medical devices for ACL repair, including but not limited to its "RetroButton™" products.

10. Upon information and belief, Arthrex's infringement has been and continues to be willful and deliberate.

11. As a result of Arthrex's infringement, Smith & Nephew will suffer severe and irreparable harm, unless infringement is enjoined by this Court, and has suffered substantial damages.

SECOND CLAIM FOR RELIEF

(Patent Infringement)

12. Smith & Nephew re-alleges and incorporates by reference paragraphs 1 through 11, as if fully set forth herein.

13. Arthrex is infringing and has infringed and/or induced infringement of and/or contributed to the infringement of the '301 patent, including, without limitation, by making, using, selling, offering for sale, and/or importing medical devices for ACL repair, including but not limited to its "RetroButton™" products.

14. Upon information and belief, Arthrex's infringement has been and continues to be willful and deliberate.

15. As a result of Arthrex's infringement, Smith & Nephew will suffer severe and irreparable harm, unless that infringement is enjoined by this Court, and has suffered substantial damages.

JURY DEMAND

16. Smith & Nephew demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Smith & Nephew requests that after a trial the Court enter judgment:

A. Adjudging that Smith & Nephew owns the '588 patent with all rights to recovery thereunder, and that the '588 patent is good and valid in law and enforceable;

B. Adjudging that Arthrex has and continues to infringe and induce infringement of the '588 patent, and that such infringement has been willful and deliberate;

C. Enjoining Arthrex, its officers, directors, employees, agents, licensees, successors, and assigns, and all persons in concert with them, from further infringement of the '588 patent;

D. Adjudging that Smith & Nephew owns the '301 patent with all rights to recovery thereunder, and that the '301 patent is good and valid in law and enforceable;

E. Adjudging that Arthrex has and continues to infringe and induce infringement of the '301 patent, and that such infringement has been willful and deliberate;

F. Enjoining Arthrex, its officers, directors, employees, agents, licensees, successors, and assigns, and all persons in concert with them, from further infringement of the '301 patent;

G. Awarding Smith & Nephew compensatory damages caused by Arthrex's infringement, plus pre-judgment and post-judgment interest accrued on such amounts as provided by law;

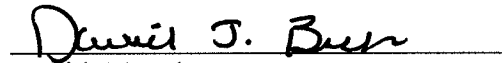
H. Trebling the damages assessed against Arthrex pursuant to 35 U.S.C. § 284;

I. Awarding Smith & Nephew its costs and expenses of this litigation, including reasonable attorneys' fees and disbursements, pursuant to 35 U.S.C. § 285; and

J. Awarding Smith & Nephew such further relief as the Court deems just and proper.

Dated: August 7, 2007

Respectfully submitted,



David J. Beck
Texas State Bar No. 00000070
BECK, REDDEN & SECREST, LLP
One Houston Center
1221 McKinney Street
Suite 4500
Houston, Texas 77010
Telephone: (713) 951-3700
Facsimile: (713) 951-3720
Email: dbeck@brsfirm.com

**LEAD ATTORNEY FOR PLAINTIFF SMITH &
NEPHEW, INC.**

Of Counsel:

Michael E. Richardson
Texas State Bar No. 24002838
BECK, REDDEN & SECREST, L.L.P.
1221 McKinney Street
Suite 4500
Houston, Texas 77010
Telephone: (713) 951-3700
Facsimile: (713) 951-3720
Email: mrichardson@brsfirm.com

Mark G. Matuschak
WILMER CUTLER PICKERING HALE AND DORR LLP
60 State Street
Boston, Massachusetts 02109
Telephone: (617) 526-6000
Facsimile: (617) 526-5000

James M. Dowd
Colin Rushing
WILMER CUTLER PICKERING HALE AND DORR LLP
1875 Pennsylvania Avenue N.W.
Washington, DC 20008
Telephone: (202) 663-6000
Facsimile: (202) 663-6363